IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

TUESDAY, THE 3RD APRIL 2007 / 13TH CHAITHRA 1930

Crl.MC.No. 5100 of 2003(B)

CC.1047/2001 of JUDL.MAGISTRATE OF FIRST CLASS-I, ERNAKULAM

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PETITIONER: 2ND ACCUSED:

M.DHARMARAJ,
PROPRIETOR, M/S. BALAJI TEA CORPORATION, NO.2,
VIVEK TOURIST HOME, FIGURE OF 8 ROAD, COONOOR-2.

BY ADV. SRI.K.A.SALIL NARAYANAN
SRI.NELSON J.MANAYIL

RESPONDENTS: COMPLAINANT & STATE:

1. M/S. PARAMOUNT TEA MARKETING PVT. LTD.,
HEAD OFFICE & ADMINISTRATIVE OFFICE AT XXIV/1469,
5TH CROSS ROAD, WILLINGDON ISLAND, COCHIN-3,
REPRESENTED BY ITS POWER OF ATTORNEY HOLDER,
MUTHURAMAN.

2. STATE OF KERALA,
REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA.

BY PUBLIC PROSECUTOR SRI.GIKKU JACOB
ADV. SRI.PEEYUS A.KOTTAM
SRI.ASHIK K.MOHAMMED ALI

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 03/04/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J

Crl.M.C.No.5100 of 2003

Dated this the 3rd day of April, 2007

ORDER

The petitioner is the 2nd accused in a prosecution under Section 138 of the N.I Act. The 1st accused is the proprietory concern of the petitioner in whose name the cheque in question was allegedly issued by the petitioner/2nd accused.

2. Cognizance has been taken on the complaint. The petitioner has appeared before the learned Magistrate. It is submitted that trial has already commenced. The complainant has already been examined in part. It is at this stage that the petitioner has come to this Court with this petition under Section 482 Cr.P.C praying for quashing of the proceedings.

3. Signature in the cheque is not seen seriously disputed. Handing over of the cheque by the petitioner to the complainant is also not in dispute. The short contention is that the cheque was handed over as security consistent with the practice in the trade when tea auction takes place.

4. The petitioner claims that the powers under Section 482 Cr.P.C may be invoked. What are the reasons ? The learned counsel for the petitioner first of all submits that the very same complainant

had filed a complaint before the Judicial Magistrate of the First Class, Coonoor (Tamil Nadu) raising an allegation that an employee of his has committed offences of criminal breach of trust, forgery etc. and that he has reason to believe that the said offence was committed in connivance with the petitioner who is the proprietor of Balaji Tea Corporation, the 1st accused in this case. After completing the investigation in the said complaint (it was referred to the police under Section 156(1) Cr.P.C), final report/charge sheet has been filed before the Judicial Magistrate of the First Class, Coonoor against the said employees of the complainant and two others including the petitioners herein. In as much as such a complaint was filed and cognizance has been taken by the learned Magistrate at Coonoor for the offences punishable under Sections 420, 408 and 120 B IPC, the present complaint under Section 138 of the N.I Act is not maintainable, it is urged.

5. Further it is contended that going by the averments in the complaint, the present cheque was issued after two earlier cheques issued by the petitioner to the complainant were returned dishonoured. In respect of those two cheques, proceedings are pending before the Magistrate at Coonoor as Annexures-5 & 6. In short, the crux of the contention of the petitioner is that in view of Annexure-1, 5 & 6

proceedings pending before the Judicial Magistrate of the First Class, Coonoor, the present prosecution is only an abuse of process of the Court and therefore it is liable to be quashed.

6. The learned counsel for the respondent/complainant on the contrary submits that trial having already commenced, there is absolutely no reason to invoke the powers under Section 482 Cr.P.C at this stage. Trial which has already commenced and in which the petitioner has taken part without demur may not be interrupted at this stage. Disputed facts will have to be resolved in the trial to be completed before the learned Magistrate, submits the learned counsel for the respondent.

7. The learned counsel for the respondent further contends that Annexures-!, 5 & 6 really having nothing to do with the present complaint. The cheque issued in this case is for an amount of Rs.16 lakhs. The total liability which the petitioner owes to the complainant exceeds Rs.20 lakhs and in these circumstances, it would be idle to assume that the present cheque for Rs.16 lakhs is issued for discharge of the liability in respect of the cheques which are the subject matter in Annexures-5 & 6 as also the offence under Section 420 I.P.C which is the subject matter of Annexure-1 complaint.

8. I shall scrupulously avoid any detailed discussions of the disputed facts which might prejudice the rights of parties in the trial which is to go on in Annexures-1, 5 & 6 and in the present case. Suffice it to say that I am of the opinion that the prosecution under Section 138 of the N.I Act does not appear to have anything directly to do with the grievance raised in Annexure-1 complaint. Primarily that was a complaint about misappropriation and improper conduct of an employee of the complainant herein. In the course of investigation, it was revealed to the police that the petitioner herein also is an accused in the said crime. Significantly that prosecution does not deal with the monetary liability between the parties. Going by the averments in the present complaint it would appear that the allegations is that after the commencement of the disputes relating to Annexures-1, 5 & 6, a cheque was issued for Rs.16 lakhs. The learned counsel for the respondent contends that the total liability exceeds Rs.20 lakhs and all the 3 cheques involved in the present case-Annmexures-5 & 6, would cover only an amount less than Rs.20 lakhs. In these circumstances, the contention that the same amount is the consideration for the cheques in Annexures-5, 6 and the present prosecution cannot obviously succeed.

9. At the risk of repetition I would like to mention that I do not want to advert to the factual disputes in detail. It is for the petitioner to raise and substantiate all such contentions in the proceedings before the learned Magistrate. Suffice it to say that I am not persuaded in the facts and circumstances of this case to invoke the powers under Section 482 Cr.P.C to prematurely terminate the proceedings in this case which has already been initiated and in which, trial is half way through.

10. This Crl.M.C is dismissed, but I may hasten to observe that I am choosing only to come to the conclusion that powers under Section 482 Cr.P.C need not be invoked in this proceedings and the petitioner's liberty to raise and substantiate all relevant contentions before the learned Magistrate shall remain unfettered by the dismissal of this Crl.M.C.

(R.BASANT, JUDGE)

rtr/-